

AMENDED IN SENATE SEPTEMBER 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1386**

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**Introduced by Committee on Labor and Employment (Roger  
Hernández (Chair), Alejo, Chau, and Holden)**

March 4, 2013

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An act to amend Section 98.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1386, as amended, Committee on Labor and Employment. Employment: employee complaints: final orders.

Existing law vests with the Labor Commissioner the authority to hear employee complaints regarding the payment of wages and other employment-related issues. Existing law requires the Labor Commissioner to file an order, decision, or award within 15 days of hearing an employee complaint. If no party to the action appeals the order, decision, or award within 10 days after its service, existing law provides that the order, decision, or award becomes the final order for the action. The Labor Commissioner is required to file the final order with the clerk of the superior court of the appropriate county within 10 days of the order, decision, or award becoming the final order for the action, unless the parties reach a settlement approved by the Labor Commissioner. Existing law then requires the clerk of the superior court to enter judgment in conformity with the final order, which has the same force and effect as a judgment entered in a civil action.

This bill would ~~authorize the Labor Commissioner to file a certified copy of the order within 10 days of its becoming final~~ *provide that, under the above provisions, upon an order becoming final, a lien is*

*created and the Labor Commissioner may record a certificate of lien, as specified, with the county recorder of any county in which the employer's property may be located. The bill would require the certificate to contain specified information. The bill would provide that the amount due under the final order shall be a the lien would continue on the employer's personal and real property until satisfied or released, as provided, or for 10 years, as specified, and would require the county recorder to accept, record, and index the order as a mortgage on real estate and to file and index the order as a security interest, certificate of lien, as specified. By requiring a higher level of service on a local agency, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 98.2 of the Labor Code is amended to
- 2 read:
- 3 98.2. (a) Within 10 days after service of notice of an order,
- 4 decision, or award the parties may seek review by filing an appeal
- 5 to the superior court, where the appeal shall be heard de novo. The
- 6 court shall charge the first paper filing fee under Section 70611 of
- 7 the Government Code to the party seeking review. The fee shall
- 8 be distributed as provided in Section 68085.3 of the Government
- 9 Code. A copy of the appeal request shall be served upon the Labor
- 10 Commissioner by the appellant. For purposes of computing the
- 11 10-day period after service, Section 1013 of the Code of Civil
- 12 Procedure is applicable.
- 13 (b) As a condition to filing an appeal pursuant to this section,
- 14 an employer shall first post an undertaking with the reviewing
- 15 court in the amount of the order, decision, or award. The
- 16 undertaking shall consist of an appeal bond issued by a licensed
- 17 surety or a cash deposit with the court in the amount of the order,
- 18 decision, or award. The employer shall provide written notification
- 19 to the other parties and the Labor Commissioner of the posting of

1 the undertaking. The undertaking shall be on the condition that, if  
2 any judgment is entered in favor of the employee, the employer  
3 shall pay the amount owed pursuant to the judgment, and if the  
4 appeal is withdrawn or dismissed without entry of judgment, the  
5 employer shall pay the amount owed pursuant to the order,  
6 decision, or award of the Labor Commissioner unless the parties  
7 have executed a settlement agreement for payment of some other  
8 amount, in which case the employer shall pay the amount that the  
9 employer is obligated to pay under the terms of the settlement  
10 agreement. If the employer fails to pay the amount owed within  
11 10 days of entry of the judgment, dismissal, or withdrawal of the  
12 appeal, or the execution of a settlement agreement, a portion of  
13 the undertaking equal to the amount owed, or the entire undertaking  
14 if the amount owed exceeds the undertaking, is forfeited to the  
15 employee.

16 (c) If the party seeking review by filing an appeal to the superior  
17 court is unsuccessful in the appeal, the court shall determine the  
18 costs and reasonable attorney's fees incurred by the other parties  
19 to the appeal, and assess that amount as a cost upon the party filing  
20 the appeal. An employee is successful if the court awards an  
21 amount greater than zero.

22 (d) If no notice of appeal of the order, decision, or award is filed  
23 within the period set forth in subdivision (a), the order, decision,  
24 or award shall, in the absence of fraud, be deemed the final order.

25 (e) The Labor Commissioner shall file, within 10 days of the  
26 order becoming final pursuant to subdivision (d), a certified copy  
27 of the final order with the clerk of the superior court of the  
28 appropriate county unless a settlement has been reached by the  
29 parties and approved by the Labor Commissioner. Judgment shall  
30 be entered immediately by the court clerk in conformity therewith.  
31 The judgment so entered has the same force and effect as, and is  
32 subject to all of the provisions of law relating to, a judgment in a  
33 civil action, and may be enforced in the same manner as any other  
34 judgment of the court in which it is entered. Enforcement of the  
35 judgment shall receive court priority.

36 (f) (1) In order to ensure that judgments are satisfied, the Labor  
37 Commissioner may serve upon the judgment debtor, personally  
38 or by first-class mail at the last known address of the judgment  
39 debtor listed with the division, a form similar to, and requiring the  
40 reporting of the same information as, the form approved or adopted

1 by the Judicial Council for purposes of subdivision (a) of Section  
2 116.830 of the Code of Civil Procedure to assist in identifying the  
3 nature and location of any assets of the judgment debtor.

4 (2) The judgment debtor shall complete the form and cause it  
5 to be delivered to the division at the address listed on the form  
6 within 35 days after the form has been served on the judgment  
7 debtor, unless the judgment has been satisfied. In case of willful  
8 failure by the judgment debtor to comply with this subdivision,  
9 the division or the judgment creditor may request the court to apply  
10 the sanctions provided in Section 708.170 of the Code of Civil  
11 Procedure.

12 ~~(g) The Labor Commissioner may file, within 10 days of the~~  
13 ~~order becoming final pursuant to subdivision (d), a certified copy~~  
14 ~~of the final order with the county recorder of any county in which~~  
15 ~~the employer's property may be located. The order may be filed~~  
16 ~~in any and all counties of the state, at the Labor Commissioner's~~  
17 ~~discretion and depending upon information the Labor~~  
18 ~~Commissioner obtains concerning the employer's assets. The~~  
19 ~~amount found due under the order shall be a lien in favor of the~~  
20 ~~employee named in the order, and against the personal and real~~  
21 ~~property of the employer named in the order, within the county in~~  
22 ~~which the order is filed. The recorder shall accept and file the order~~  
23 ~~and record it as a mortgage on real estate, shall file the same as a~~  
24 ~~security interest, and shall index the same as a mortgage on real~~  
25 ~~estate and as a security interest. The recorder shall include all~~  
26 ~~charges for the services to be performed by him or her, as required~~  
27 ~~by this section, in the amount due under the lien.~~

28 *(g) (1) As an alternative to a judgment lien, upon the order*  
29 *becoming final pursuant to subdivision (d), a lien on real property*  
30 *may be created by the Labor Commissioner recording a certificate*  
31 *of lien, for amounts due under the final order and in favor of the*  
32 *employee or employees named in the order, with the county*  
33 *recorder of any county in which the employer's real property may*  
34 *be located, at the Labor Commissioner's discretion and depending*  
35 *upon information the Labor Commissioner obtains concerning the*  
36 *employer's assets. The lien attaches to all interests in real property*  
37 *of the employer located in the county where the lien is created to*  
38 *which a judgment lien may attach pursuant to Section 697.340 of*  
39 *the Code of Civil Procedure.*

1     (2) *The certificate of lien shall include information as prescribed*  
2 *by Section 27288.1 of the Government Code.*

3     (3) *The recorder shall accept and record the certificate of lien*  
4 *and shall index it as prescribed by law.*

5     (4) *Upon payment of the amount due under the final order, the*  
6 *Labor Commissioner shall issue a certificate of release, releasing*  
7 *the lien created under paragraph (1). The certificate of release*  
8 *may be recorded by the employer at the employer's expense.*

9     (5) *Unless the lien is satisfied or released, a lien under this*  
10 *section shall continue until 10 years from the date of its creation.*

11     (h) Notwithstanding subdivision (e), the Labor Commissioner  
12 may stay execution of any judgment entered upon an order,  
13 decision, or award that has become final upon good cause appearing  
14 therefor and may impose the terms and conditions of the stay of  
15 execution. A certified copy of the stay of execution shall be filed  
16 with the clerk entering the judgment.

17     (i) When a judgment is satisfied in fact, other than by execution,  
18 the Labor Commissioner may, upon the motion of either party or  
19 on its own motion, order entry of satisfaction of judgment. The  
20 clerk of the court shall enter a satisfaction of judgment upon the  
21 filing of a certified copy of the order.

22     (j) The Labor Commissioner shall make every reasonable effort  
23 to ensure that judgments are satisfied, including taking all  
24 appropriate legal action and requiring the employer to deposit a  
25 bond as provided in Section 240.

26     (k) The judgment creditor, or the Labor Commissioner as  
27 assignee of the judgment creditor, is entitled to court costs and  
28 reasonable attorney's fees for enforcing the judgment that is  
29 rendered pursuant to this section.

30     ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
31 ~~Section 6 of Article XIII B of the California Constitution because~~  
32 ~~a local agency or school district has the authority to levy service~~  
33 ~~charges, fees, or assessments sufficient to pay for the program or~~  
34 ~~level of service mandated by this act, within the meaning of Section~~  
35 ~~17556 of the Government Code.~~